

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

KENNETH KERSTOCK,

Plaintiff,

v.

Case Number 08-14500-BC
Honorable Thomas L. Ludington

COUNTY OF ARENAC, *et al.*,

Defendants,

and

AMY S. LYNCH,

Plaintiff,

v.

COUNTY OF ARENAC, *et al.*,

Defendants,

and

GAIL SEDER,

Plaintiff,

v.

COUNTY OF ARENAC, *et al.*,

Defendants.

_____/

**ORDER GRANTING DEFENDANT'S MOTION FOR PROTECTIVE ORDER AND TO
STAY DISCOVERY AND MOTION TO QUASH SUBPOENA**

On February 12, 2009, Defendant Robert J. Lesneski filed a motion to dismiss and for summary judgment accompanied by a twenty-one page brief, which all Defendants join. Dkt. # 24.,

29 Defendant asserts, inter alia, qualified immunity because Plaintiffs' complaints do not allege a violation of a clearly established constitutional right. On February 20, 2009, Defendant filed a motion for a protective order and to stay discovery. Dkt. # 28. Defendant asserts that all discovery should be stayed until resolution of the qualified immunity issue. Plaintiffs did not file a response. On March 9, 2009, Defendant filed a related motion to quash Plaintiffs' subpoena to depose Defendant.

Qualified immunity is "an immunity from suit." *Saucier v. Katz*, 533 U.S. 194, 201 (2001). When a defendant asserts qualified immunity, "a ruling on that issue should be made early in the proceedings so that the costs and expenses of trial are avoided where the defense is dispositive." *Id.* Here, Plaintiffs allege violations of their rights under the Fifth and Fourteenth Amendments pursuant to 42 U.S.C. § 1983. If qualified immunity is applicable in this instance, then the Court's subject matter jurisdiction may be affected with respect to Plaintiffs' pendant state-law causes of action. Consequently, the Court will grant Defendant's motions, stay all discovery pending resolution of the threshold qualified immunity issue, and quash the subpoena. *See* Fed. R. Civ. P. 45(c) (subpoena may be quashed if "subjects a person to undue burden").

Accordingly, it is **ORDERED** that Defendant Robert J. Lesneski's motion for protective order and staying discovery [Dkt. # 28] and motion to quash subpoena [Dkt. # 31] are **GRANTED**. Discovery with respect to all Defendants is **STAYED** until further order of this Court.

It is further **ORDERED** that Plaintiff's subpoena of Defendant Robert J. Lesneski is **QUASHED**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: March 16, 2009

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on March 16, 2009.

s/Tracy A. Jacobs
TRACY A. JACOBS